

**** E-filed September 4, 2009 ****

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15 **UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 SANTA CLARA VALLEY HOUSING
17 GROUP, INC and KRISTEN M. BOWES,

18
19 Plaintiffs,

20 v.

21 UNITED STATES OF AMERICA,

22 Defendant.

Case No. 5:08-cv-05097-JW

**STIPULATED PROTECTIVE ORDER
AS AMENDED BY THE COURT**

~~Honorable Judge James Ware~~

1 By agreement of the parties, plaintiffs Santa Clara Valley Housing Group, Inc.
2 and Kristen M. Bowes ("Plaintiffs"), and defendant United States of America ("United
3 States" or "Defendant") (each, a "Party" and together, "the Parties"), and non-party
4 KPMG LLP ("KPMG"), by and through their attorneys, and in order to protect certain
5 information during the discovery phase of this litigation that non-party KPMG may be
6 required to produce during the course of this action while recognizing the "vital public
7 interest in open judicial proceedings," 28 C.F.R. §50.9, it is hereby ORDERED that:

8 1. ~~All~~ Information, materials, and documents (whether in paper or electronic form)
9 produced or furnished by KPMG to either or both of the Parties in response to subpoenas
10 issued in this case that contain any confidential tax, personal, or financial information
11 relating to any individual or entity other than the Parties, or their employees or affiliates, **which KPMG**
12 **designates and identifies as "Protected Information" after a good-faith determination that the**
13 **information, materials, or documents warrant protection under the appropriate standards,**
14 shall be deemed "Protected Information," ~~provided KPMG designates and identifies~~
15 ~~particular information (such as ranges of documents) as "Protected Information."~~

16 Notwithstanding any other provisions of this Order, the Parties and KPMG understand
17 and agree that documents produced by KPMG in response to subpoenas in this case, and
18 that are otherwise publicly available, are not entitled to treatment as Protected
19 Information pursuant to this Order, and may be treated by the Parties as not being
20 Protected Information without the need for any further order of this Court. The
21 presumptions concerning Protected Information identified by the paragraph are subject to
22 the objection provisions of paragraph 7. The issuance of this Protective Order does not
23 constitute a finding by the Court (or an admission by any Party) that any Protected
24 Information is relevant, admissible, or otherwise not subject to challenge on evidentiary
25 grounds.

26 2. Protected Information may be used in any and all discovery proceedings in this
27 case including, but not limited to, document requests, requests for admission, depositions,
28 interrogatories, and discovery motions, but shall not otherwise be publicly disclosed

1 except as permitted by this Order. Protected Information may be used by the Parties in
2 connection with the prosecution or defense of this action (including, but not limited to, all
3 uses associated with motions filings and all uses associated with offering Protected
4 Information into evidence or eliciting/offering testimony at trial), but not for any other
5 pending or threatened civil litigation, nor any business or other purpose, except as
6 otherwise provided for in this Order. The United States may use Protected Information in
7 other civil litigation, provided that the United States provides written notification to
8 KPMG or its counsel in advance of any intended use in other civil litigation and provided
9 that such advance written notification confirms the agreement of the United States that (i)
10 the Protected Information will be used solely for purposes of such other civil litigation
11 and (ii) access to the Protected Information will be limited in the same manner and
12 subject to the same limitations as provided in this Order.

13 3. Except as described herein (or by subsequent order of this Court), the Parties
14 agree not to give, show, disclose, disseminate, or describe, either directly or indirectly,
15 Protected Information to any person(s) other than those identified, below, by this Order.

16 4. Access to Protected Information shall be restricted to:

17 (a). This Court and its personnel;

18 (b). Counsel for the Parties, including outside and in-house lawyers; other
19 lawyers regularly employed in their offices; and such supervising attorneys, lawyers'
20 staff, and administrators, to whom it is necessary to disclose Protected Information for
21 purposes of this litigation (including secretaries, paralegals, clerks, and other assistants);

22 (c). The Parties themselves (for purposes of the United States, this includes all
23 persons employed by the United States Department of Justice or the Internal Revenue
24 Service whose duties include assisting with, or reviewing, matters concerning this
25 litigation);

1 (d). Independent experts or consultants retained by counsel for the Parties for
2 the purpose of assisting in this litigation, including any of their staff to whom it is
3 necessary to disclose Protected Information in order to assist in their participation in this
4 litigation;

5 (e). Any potential witness in this litigation identified in the Complaint,
6 identified during discovery or by the Parties' witness lists, or planned to be called as a
7 witness by a Party at deposition or during trial or to be interviewed about a matter at issue
8 in this case, as well as any counsel for such witness and any person(s) present during
9 such testimony or interview. For purposes of this paragraph 4(e), the Parties and KPMG
10 understand and agree that documents produced by KPMG in response to subpoenas in
11 this case, and that are otherwise available to a potential witness described in this
12 paragraph 4(e), shall not be treated as Protected Information with respect to such
13 potential witness. Individuals identified by this Paragraph may be provided with a copy
14 of any relevant Protected Information for their review in preparation for or during the
15 witness's deposition or testimony, either at trial or other hearing in this litigation. Upon
16 completion of their review, the Protected Information provided shall be returned to
17 counsel for the Party that supplied it;

18 (f). Any mediators, arbitrators, or other outside parties and their staff enlisted
19 by all Parties to assist in the resolution of this matter;

20 (g). Outside or contracted litigation-support services, including commercial
21 copying services;

22 (h). Any court reporter, transcriber or videographer who reports, transcribes or
23 records testimony in this action at a deposition;

24 (i). Employees of the Department of Justice and the Internal Revenue Service
25 who are assigned to any criminal investigation or matter for their unrestricted use in such
26 criminal investigation or matter, which use shall not be limited by the terms of this Order; **and**

27 **(j). Anyone as may be ordered by the court.**

1 5. No Party shall disclose Protected Information or copies of Protected Information
2 to any of the persons identified in Paragraphs 4(d) or 4(f) without first having obtained an
3 executed acknowledgment from such person, substantially in the form attached hereto or,
4 in the case of depositions, an acknowledgement on the record that such person agrees to
5 be bound by the terms of this Protective Order. No Party shall disclose Protected
6 Information or copies of Protected Information to any of the persons identified in
7 Paragraphs 4(e) or 4(h) without first seeking to have such persons execute an
8 acknowledgment, substantially in the form attached hereto or, in the case of depositions,
9 an acknowledgement on the record that such person agrees to be bound by the terms of
10 this Protective Order.

11 6. The Parties and KPMG agree that the inadvertent or unintentional disclosure by a
12 Party of Protected Information shall not be deemed a waiver in whole or in part of any
13 claim of confidentiality or protected status. This paragraph applies to both the specific
14 information disclosed as well as any other information relating thereto or on the same or
15 related subject matter.

16 7. Any Party may object to the designation of, or failure to designate, a document as
17 Protected Information under this Protective Order. If the Parties and KPMG cannot
18 resolve the matter by agreement **after conferring in good faith (in voice-to-voice dialogue; other**
19 **forms of communication are not sufficient)**, any Party or KPMG may submit the matter to the Court
20 for resolution. **The burden of persuasion in any such proceeding shall be on the side claiming**
21 **protection.** Until the Court resolves the matter, the disputed document shall be treated
22 as protected by this Protective Order.

23 8. Should either Party be commanded pursuant to a valid subpoena issuing from any
24 federal or state court, administrative agency or other governmental authority to disclose
25 Protected Information, such Party will promptly notify KPMG and its counsel in advance
26 of any disclosure pursuant to such a subpoena in order to afford KPMG an opportunity to
27 object or move to quash the subpoena.

1 9. Within ninety (90) days after the final conclusion of this litigation, including all
2 appeals, each Party will provide written certification to KPMG that all originals and/or
3 copies of all Protected Information (including both paper and electronic versions) in the
4 possession of the Party, its counsel or other agents, have been either returned to KPMG
5 or destroyed. Each Party's counsel may retain any attorney work product even though it
6 contains Protected Information, but such retained work product shall remain subject to
7 the terms of this Protective Order. The Defendant's counsel may retain its work product,
8 copies of court filings and official transcripts and exhibits and other documents required
9 to be retained by written Department of Justice record-retention policy, provided that all
10 such retained documents designated as Protected Information continue to be treated as
11 provided herein.

12 10. This Protective Order shall be effective immediately upon signature by counsel
13 for either Party, and shall remain in effect after conclusion of this litigation, and the
14 signing Parties agree that the Court may enforce the terms of this agreement and may
15 disclose any Protected Information as part of a Court order or memorandum. **The Court shall retain
jurisdiction to enforce the terms of this Protective Order for six months after the final
termination of this action.**

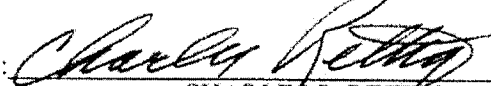
16 11. This Stipulation may be executed by each Party separately.

17 12. Counsel for the Parties shall promptly report any willful breach of the provisions
18 of this Protective Order to counsel for KPMG. Upon discovery of any breach of this
19 Protective Order, counsel for the breaching Party shall immediately take appropriate
20 action to cure the violation and retrieve any Protected Information that may have been
21 disclosed to persons not covered by this Protective Order. The Parties and KPMG shall
22 reasonably cooperate in determining the existence of any such breach and whether there
23 is reason to report the breach to the Court.

24 13. Upon entry of this Order by the Court and in accordance with the return date of
25 the subpoena, KPMG shall furnish a set of responsive documents to both counsel for the
26 Plaintiffs and counsel for the Defendant.

1 DATED: September 1, 2009 HOCHMAN SALKIN RETTIG TOSCHER & PEREZ, P.C.

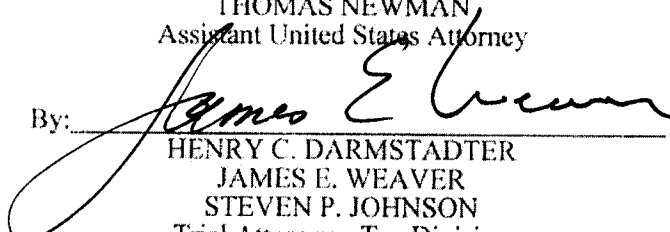
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3 By:

4 
5 CHARLES P. RETTIG
6 Attorneys for Plaintiffs
7 SANTA CLARA VALLEY HOUSING GROUP, INC and
8 KRISTEN M. BOWES

9 DATED: September 2, 2009

10 JOSEPH P. RUSSONIELLO
11 United States Attorney
12 THOMAS NEWMAN
13 Assistant United States Attorney

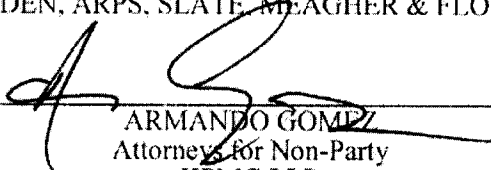
14 By:

15 
16 HENRY C. DARMSTADTER
17 JAMES E. WEAVER
18 STEVEN P. JOHNSON
19 Trial Attorneys, Tax Division
20 U.S. Department of Justice

21 Attorneys for the Defendant
22 UNITED STATES OF AMERICA

23 DATED: September 1, 2009 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

24 By:

25 
26 ARMANDO GOMEZ
27 Attorneys for Non-Party
28 KPMG LLP

29 PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

30 DATED: September 4, 2009

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32 HOWARD R. LLOYD
33 United States Magistrate Judge

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ACKNOWLEDGMENT

The undersigned has been provided with a copy of the foregoing Protective Order entered in the case captioned *Santa Clara Valley Housing Group, Inc. and Kristen M. Bowes v. United States of America*, Case No. 5:08-cv-05097-JW; has had an opportunity to review the Protective Order; and is fully familiar with all of the terms of the Protective Order. By executing this Acknowledgment, the undersigned agrees to be bound by the terms of the Protective Order.

Print Name: _____

Address: _____

Date signed: _____